

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

TRANSAMERICA LIFE INSURANCE	:	
COMPANY,	:	
Plaintiff	:	
	:	
vs.	:	C.A. No. 09-471 S
	:	
JOSEPH CARAMADRE, RAYMOUR	:	
RADHAKRISHNAN, ESTATE	:	
PLANNING RESOURCES, INC.,	:	
ESTELLA RODRIQUES, EDWARD	:	
MAGGIACOMO, JR., LIFEMARK	:	
SECURITIES CORP. and PATRICK	:	
GARVEY	:	
Defendants	:	

ANSWER AND COUNTERCLAIM OF
DEFENDANT LIFEMARK SECURITIES CORP.

Defendant LifeMark Securities Corp. (“Defendant”) for its Answer to the Third Amended Complaint (“Complaint”) of Plaintiff Transamerica Life Insurance Company (“Plaintiff” or “Transamerica”) states as follows:

FIRST DEFENSE

1-11. Admitted.

12. Defendant admits that Defendant Joseph Caramadre (“Caramadre”) is a licensed attorney, but is without knowledge or information sufficient to form a belief as to truth of the remaining allegations set forth in paragraph 12 of the Complaint.

13-16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 13-16 of the Complaint.

17. Defendant admits only that Transamerica and the insurance industry have created a newly-minted acronym for a type of annuity transaction it refers to as a “STAT”, but is without

knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 17 of the Complaint.

18. Defendant admits that if an annuity company charges for death benefits and an annuitant dies within a proscribed time period, an Investor/Owner may be protected from a loss, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 18 of the Complaint.

19. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 19 of the Complaint.

20. Admitted.

21. Defendant admits only that Transamerica offers a flexible premium variable annuity referred to as the “Transamerica LandMark” and that the LandMark prospectus speaks for itself, and that Transamerica collects fees for death benefits and other features, but denies the remaining allegations of paragraph 21 of the Complaint.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 22 of the Complaint.

23. Denied.

24-27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 24-27 of the Complaint.

28. Defendant admits only that Defendants Caramadre, Defendant Radhakrishnan, and Defendant Estate Planning Resources were not authorized to sell Transamerica annuities through Defendant and that Defendant Edward Maggiacomo (“Maggiacomo”), a LifeMark representative and a Transamerica agent, signed and submitted the application; and denies the remaining allegations set forth in paragraph 28 of the Complaint.

29. Defendant admits only that Exhibit D speaks for itself.

30-31. Admitted.

32. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 32 of the Complaint.

33. Admitted.

34. Defendant admits that Maggiacomo signed the application as a Registered Representative of Defendant and as an agent of Transamerica, denies that Maggiacomo is an employee of Defendant, and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 34 of the Complaint.

35-36. Denied.

37. Defendant admits only that Exhibit E was issued and speaks for itself, and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 37 of the Complaint.

38. Defendant admits only that in connection with the sale of the Annuity, Transamerica paid a commission to Defendant, and Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 38 of the Complaint.

39. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 39 of the Complaint.

40. Defendant admits only that Exhibit F speaks for itself and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 40 of the Complaint.

AS TO COUNT I:

41. Defendant hereby reasserts and incorporates by reference its responses to all preceding paragraphs of the Complaint as if set forth fully herein.

42-56. Denied.

AS TO COUNT II:

57. Defendant hereby reasserts and incorporates by reference its responses to all preceding paragraphs of the Complaint as if set forth fully herein.

58-59. Denied.

AS TO COUNT III:

60. Defendant hereby reasserts and incorporates by reference its responses to all preceding paragraphs of the Complaint as if set forth fully herein.

61-65. Denied.

AS TO COUNT IV:

66. Defendant hereby reasserts and incorporates by reference its responses to all preceding paragraphs of the Complaint as if set forth fully herein.

67. Denied.

AS TO COUNT V:

68. Defendant hereby reasserts and incorporates by reference its responses to all preceding paragraphs of the Complaint as if set forth fully herein.

69. Defendant admits only that it entered into a General Agent Agreement and a Selected Broker Agreement with PFL Life Insurance Company in November, 2000 and that the document speaks for itself; Defendant denies the remaining allegations set forth in paragraph 69 of the Complaint.

70-76. Denied.

AS TO COUNT VI:

77. Defendant hereby reasserts and incorporates by reference its responses to all preceding paragraphs of the Complaint as if set forth fully herein.

78. Denied

AS TO COUNT VII:

79. Defendant hereby reasserts and incorporates by reference its responses to all preceding paragraphs of the Complaint as if set forth fully herein.

80-82. Denied.

AS TO COUNT VIII:

83. Defendant hereby reasserts and incorporates by reference its responses to all preceding paragraphs of the Complaint as if set forth fully herein.

84-88. Denied.

AS TO COUNT IX:

89. Defendant hereby reasserts and incorporates by reference its responses to all preceding paragraphs of the Complaint as if set forth fully herein.

90. Denied.

AS TO COUNT X:

91. Defendant hereby reasserts and incorporates by reference its responses to all preceding paragraphs of the Complaint as if set forth fully herein.

92. Admitted.

93. Denied

AS TO COUNT XI:

94. Defendant hereby reasserts and incorporates by reference its responses to all preceding paragraphs of the Complaint as if set forth fully herein.

95-97. Denied.

SECOND DEFENSE

The alleged damages were caused by the actions, conduct, and/or negligence of the Plaintiff.

THIRD DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

FOURTH DEFENSE

Plaintiff fails to state claims upon which relief can be granted.

FIFTH DEFENSE

Plaintiff's claims are barred by the Doctrine of Waiver.

SIXTH DEFENSE

Any damages that Plaintiff may have sustained are the proximate result of the conduct of a third party or parties for whom the Defendant is not legally responsible.

SEVENTH DEFENSE

Plaintiff's claims are barred because any damages arise from Plaintiff's business decisions, and not from Defendant's acts or omissions.

EIGHTH DEFENSE

Plaintiff's claims are barred because Plaintiff ratified the annuity terms.

WHEREFORE, Defendant requests that the Third Amended Complaint be dismissed and that Defendant be awarded costs, plus interest and attorneys' fees.

COUNTERCLAIM

Counterclaim Plaintiff, LifeMark Securities Corp. ("LifeMark"), in response to the within Third Amended Complaint by the Plaintiff, Transamerica Life Insurance Company ("Transamerica"), hereby asserts that Transamerica's claims are arbitrary and unreasonable, brought as pretexts to try to blame LifeMark, and others, and to coerce them to pay for the consequences of Transamerica's having freely entered into annuity contracts drafted, marketed, and issued solely by Transamerica with no changes or modifications in the terms and conditions of said annuity contracts. As a result, Transamerica is acting in bad faith and is in breach of contract, is in breach of its duty of good faith and fair dealings, and should indemnify LifeMark for all damages and expenses incurred by LifeMark.

1. LifeMark is a New York Company with its principal place of business in Rochester, New York.
2. Transamerica is an Iowa Company with its principal place of business in Cedar Rapids, Iowa.
3. Transamerica offers a range of financial products for sale to the public. These products are sold nationally by a network of independent Broker/Dealers, including LifeMark.
4. One of the products offered by Transamerica is a flexible premium variable annuity referred to as the "Transamerica LandMark" ("LandMark Annuity").
5. The LandMark Annuity prospectus, *Exhibit B* to the Transamerica Complaint, makes no reference whatsoever to a requirement of an insurable interest.

6. The LandMark Annuity prospectus makes no reference to a requirement that health or medical information about an annuitant be provided.

7. Because the LandMark Annuity is “variable,” the owner is able to participate in the bond and equity market and realize an increase or decrease in the account value based on market performance.

8. The LandMark Annuity also provides a standard death benefit that pays the annuity Owners the total of all premiums paid, less any adjusted partial withdrawals.

9. For additional fees to Transamerica, the LandMark Annuity offers a “Double Enhanced” death benefit, an “Annual Step-Up” death benefit, and a “Taxpayer Rider.”

10. In its Complaint herein, Transamerica seeks relief concerning an annuity which Transamerica issued to Defendant Estella Rodriques (“Rodriques Annuity”).

11. The Rodriques Annuity was one of the type of annuities that are described in paragraphs 4 – 9 of this Counterclaim.

12. Transamerica created, marketed and issued these annuities, including the Rodriques Annuity, for the purpose of making a profit.

13. For death benefits under the Rodriques Annuity, Transamerica charged to the annuity subaccounts daily mortality and expense risk fees.

14. Transamerica expected to profit from these charges for death benefits under the Rodriques Annuity.

15. Investors purchased these annuities, including the Rodriques Annuity, for the purpose of making a profit and/or protecting their initial investment.

16. For many years, LifeMark, in its capacity as a Broker/Dealer and/or its Representatives, have been solicited by Transamerica to sell to the public various financial products, including variable annuities like the Rodriques Annuity.

17. Transamerica has provided LifeMark with application forms for the purpose of obtaining information required by Transamerica about potential Owners, Beneficiaries, and Annuitants in connection with offering variable annuities, such as the Rodriques Annuity.

18. The application form and the information sought therein for the Rodriques Annuity was prepared by Transamerica.

19. LifeMark provided Transamerica with all the information which Transamerica requested in connection with the Rodriques Annuity.

20. Transamerica, as the sole drafter of the Prospectus, the Rodriques Annuity, and the application, was at all times free to request any information it wanted to receive about the prospective Owner, Beneficiary and Annuitant for the Rodriques Annuity.

21. Transamerica alone made the business decision as to whether to perform actuarial and/or underwriting analysis for the Rodriques Annuity.

22. No one but Transamerica controlled the assumptions used by Transamerica in setting its prices for the Rodriques Annuity.

23. Transamerica through its application form for each of the Rodriques Annuity required the Annuitant to provide information as follows: full name, residence address, mail address, Social Security Number, date of birth, telephone number, email address, gender, and citizenship.

24. Transamerica did not require the Annuitant for the Rodriques Annuity to provide any medical or health information and/or certification of present health status.

25. The medical or health condition of an Annuitant was not information that Transamerica ever sought to determine in connection with deciding whether to issue annuities, including the Rodriques Annuity.

26. Transamerica provided no training and/or instruction to LifeMark that obtaining medical or health information about an Annuitant was required by Transamerica in connection with issuing annuities, including the Rodriques Annuity.

27. Transamerica never directed and/or requested LifeMark to inquire about the medical or health condition of any of the Annuitants for any of the Transamerica annuities sold through LifeMark, including the Rodriques Annuity.

28. Transamerica never directed and/or required LifeMark to provide Transamerica with any information causing the medical or health condition of any of the Annuitants for any of the Transamerica annuities sold through LifeMark, including the Rodriques Annuity.

29. The medical or health condition of Annuitant for the Rodriques Annuity was not a factor considered by Transamerica in making its actuarial assumptions for the Rodriques Annuity.

30. In pricing its annuity products, including the Rodriques Annuity, Transamerica did not factor in the medical or health condition of Annuitants.

31. Transamerica promoted, advertised and sold annuities, including the Rodriques Annuity, with enhanced death benefits as one of the features of the annuities.

32. No one but Transamerica controlled what product features it would issue as part of the Rodriques Annuity.

33. In offering enhanced death benefits and other features, Transamerica attempted to be more competitive in the variable annuity market.

34. No one but Transamerica controlled what benefits the Investors would be entitled to under the terms of the Rodriques Annuity.

35. No one but Transamerica controlled what costs could be recouped under the Rodriques Annuity.

36. LifeMark had nothing to do whatsoever with the pricing and cost determinations for the Rodriques Annuity.

37. The decision to issue the Rodriques Annuity was made solely by Transamerica.

38. The Rodriques Annuity was drafted solely by Transamerica.

39. The Rodriques Annuity drafted and issued by Transamerica was a form contract the terms and conditions of which LifeMark did not change or modify when offering such an annuity to the public.

40. The terms and conditions of the Rodriques Annuity were not changed or modified in any way from what they were when Transamerica originally drafted them.

41. For years, Transamerica has been selling annuities where the Annuitants and Investors are different people or entities and are not related.

42. With regard to the application prepared by Transamerica for the Rodriques Annuity, the Investor was not asked to provide information concerning (a) either her or the Annuitant's state of health, (b) either her or the Annuitant's life expectancy, or (c) her relationship with the Annuitant.

43. Transamerica provided no training and/or instruction and/or notice to LifeMark that a relationship between the Owner and the Annuitant was a requirement for Transamerica in connection with issuing annuities, including the Rodriques Annuity.

44. The Annuitant for the Rodriques Annuity were not parties to the annuity contract.

45. The Annuitant for the Rodriques Annuity had no control over the annuity contract.

46. The Annuitant for the Rodriques Annuity had no authority over the annuity contract.

47. The Annuitant for the Rodriques Annuity was only the measuring life for the annuity contract.

48. Transamerica believes that LifeMark has at all times an obligation to assure that Transamerica and/or LifeMark customers be treated fairly and ethically.

49. Defendant Rodriques, owner of the Rodriques Annuity, was not harmed by the issuance of the Rodriques Annuity.

50. Defendant Rodriques, owner of the Rodriques Annuity, benefitted from this contract.

51. At no time until the present controversy raised by Transamerica in its lawsuits herein, has Transamerica ever informed LifeMark that it needed and/or wanted more information from LifeMark than Transamerica has requested in its application form for the Rodriques Annuity.

52. At no time until the present controversy raised by Transamerica in its Covenants herein, has Transamerica ever informed LifeMark that it was dissatisfied with the information provided by LifeMark in the application form for the Rodriques Annuity.

53. At no time until the present controversy raised by its lawsuits herein, has Transamerica ever informed LifeMark that Transamerica expected LifeMark to provide either medical and health information and/or relationship information to Transamerica in connection with the application and issuing process for annuities, including the Rodriques Annuity.

54. One of Transamerica's requirements for the Rodriques Annuity was that Transamerica would not issue the annuity unless Transamerica receives in good order all information needed to issue the annuity.

55. The application for the Rodriques Annuity was accepted by Transamerica as being in good order.

56. The Rodriques Annuity was issued by Transamerica without requesting any additional information from LifeMark and/or Edward Maggiacomo, Jr.

57. LifeMark has consistently followed the application process established by Transamerica.

58. LifeMark fully performed its obligations to Transamerica in connection with the Rodriques Annuity.

59. Transamerica agreed to indemnify LifeMark and hold LifeMark harmless from any liability, loss, cost, claim or damage suffered by LifeMark, including legal expenses and attorneys' fees, caused by the negligence or misconduct of Transamerica and/or its directors and employees.

60. Transamerica agreed to reimburse LifeMark for any legal or other expenses reasonably incurred by LifeMark in connection with its investigation of any loss, cost, claim, damage or liability for which Transamerica has indemnified LifeMark.

61. Transamerica has wrongfully accused LifeMark of breach of contract, fraud, civil conspiracy, negligence and unjust enrichment, based on allegations that Transamerica knows are inaccurate, unfounded, frivolous, and unfair.

62. Transamerica has breached its obligations to its customers.

63. LifeMark has incurred damages as a result of Transamerica's conduct as aforesaid.

COUNT I

64. LifeMark hereby realleges and incorporates by reference paragraphs 1 through 63 of its Counterclaim as if set forth fully herein.

65. Transamerica has breached its contractual obligations to LifeMark.

COUNT II

66. LifeMark hereby realleges and incorporates by reference paragraphs 1 through 65 of its Counterclaim as if set forth fully herein.

67. Transamerica has an obligation to indemnify LifeMark.

COUNT III

68. LifeMark hereby realleges and incorporates by reference paragraphs 1 through 67 of its Counterclaim as if set forth fully herein.

69. Transamerica has acted in bad faith and in breach of its duty of good faith and fair dealing.

WHEREFORE, LifeMark demands judgment against Transamerica for all its damages, costs, expenses, and attorneys' fees.

LIFEMARK SECURITIES CORP.
By its Attorneys,

/s/ Joseph V. Cavanagh, Jr.
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Dated: April 8, 2011

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2011, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court DM/ECF System.

/s/ Joseph V. Cavanagh, Jr.